

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Southern Media Communications, Inc.)	
)	File Number EB-02-AT-304
Licensee of AM Radio Station WBCA, Bay)	
Minnette, Alabama, and Owner of Unregistered)	NAL/Acct.No. 200232480021
Antenna Structure Located at 30° 52' 10" N)	
Latitude by 087° 46' 09" W Longitude in Bay)	FRN 0004-9693-58
Minnette, Alabama)))	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: September 24, 2002

By the Enforcement Bureau, Atlanta Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find Southern Media Communications, Inc. ("Southern"), licensee of AM radio station WBCA, Bay Minnette, Alabama, and owner of unregistered antenna structure located at 30° 52' 10" North latitude by 087° 46' 09" West longitude in Bay Minnette, Alabama, apparently liable for a forfeiture in the amount of eleven thousand dollars (\$11,000) for willful violation of Sections 11.35(a) and 17.4(a) of the Commission's Rules ("Rules").¹ Specifically, we find Southern Media Communications, Inc. apparently liable for failing to ensure Emergency Alert System ("EAS") equipment was operational and failing to register their antenna structure with the Commission.

II. BACKGROUND

2. On August 22, 2002, an agent from the FCC Enforcement Bureau's Atlanta Office inspected Southern's antenna structure at 30° 52' 10" North latitude by 087° 46' 09" West longitude near Bay Minnette, Alabama. The antenna structure was used as part of radio station WBCA AM. No Antenna Structure Registration ("ASR") number was observed anywhere near the base of the structure.

3. That same day, the agent inspected the EAS system of WBCA which was co-owned and co-located with WYDH-FM at the main studio in Atmore, Alabama. The two stations shared an EAS unit. The inspection was conducted with Mr. Tom White, the designated Chief Operator. The station had a Burke EAS unit in the rack, turned on, but the equipment was not operational. When Mr. White, at the direction of the agent, attempted to send an EAS test, it did not transmit over the air for either station. At

¹ 47 C.F.R. §§ 11.35(a) and 17.4(a).

the time of the inspection, there was no evidence in either station's logs of EAS tests being sent or received for at least one year or that EAS equipment had been removed from service for repair.

4. Additionally, Mr. White as well as Mr. Walter Bowen, President of Southern Media Communications, Inc. both confirmed that the antenna structure used as part of WBCA AM was owned by the licensee. Finally, Mr. Bowen stated that he believed that the structure was properly registered, but could provide no documentation to support that statement.

5. According to Commission records searched on September 3, 2002, Southern's antenna structure for station WBCA was not registered.

III. DISCUSSION

6. Section 11.35(a) of the Rules sets forth that broadcast stations are responsible for ensuring that EAS encoders, EAS decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations are in operation. On August 22, 2002, there was no operational EAS equipment at the studios of WBCA. In addition, the station logs contained no entries indicating EAS tests had been conducted for at least one year or entries indicating EAS equipment had been removed for repair.²

7. Section 17.4(a) of the Rules states that, "[e]ffective July 1, 1996, the owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration ("FAA") must register the structure with the Commission." Southern owned the antenna structure used as part of radio station WBCA. This structure required notice to the FAA, and thus required registration with the Commission, because the structure height was over 200 feet.³ There were no Commission records indicating that this structure was registered from at least August 26 to September 3, 2002.

8. Based on the evidence before us, we find Southern Media Communications, Inc. willfully⁴ violated Sections 11.35(a) and 17.4(a) of the Rules by failing to ensure that EAS equipment was operational at WBCA and by failing to register its antenna structure with the Commission.

9. Pursuant to Section 1.80(b)(4) of the Rules,⁵ the base forfeiture amount for EAS equipment not installed or operational is \$8,000 and the base forfeiture amount for failing to register its antenna structure (failure to file required forms or information) is \$3,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the

² EAS activations and tests, failures to receive such tests, and EAS equipment malfunctions must be recorded in the station log. See 47 C.F.R. §§ 11.35(a)-(b), 11.55(c)(7) and 11.61(b).

³ See 47 C.F.R. § 17.7(a).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ 47 C.F.R. § 1.80(b)(4).

Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.”⁶ Considering the entire record and applying the factors listed above, this case warrants an \$11,000 forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ Southern Media Communications, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of eleven thousand dollars (\$11,000) for willful violation of Sections 11.35(a) and 17.4(a) of the Rules by failing to ensure that EAS equipment was installed and operational at station WBCA and failing to register its antenna structure with the Commission.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Southern Media Communications, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the *NAL*/Acct. No. and FRN referenced above. Request for payment of the full amount of *NAL* under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

13. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE *NAL*/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

⁶ 47 U.S.C. § 503 (b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁹ See 47 C.F.R. § 1.1914.

15. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Southern Media Communications, Inc., 720 South White Avenue, Bay Minnette, Alabama 36507 and an additional copy to Southern Media Communications, Inc at 1318 S. Main Street, Atmore, Alabama, 36502.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
District Director, Atlanta Office
Enforcement Bureau